THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.10812 to 10818 and 10820 of 2007

Dated: 25-06-2007

Between:

B.Ratna Kasturi Bai and others.

..... PETITIONERS

AND

The District Collector, Machilipatnam, Krishna District, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.10812 to 10818 and 10820 of 2007

ORDER:

The petitioners in this group of writ petitions purchased small extents of land comprised in different survey numbers situated at Gollapudi Village, Vijayawada Rural Mandal, Krishna District under different registered sale deeds. The vendor of the petitioners in W.P.Nos.10812, 10813, 10817 and 10818 of 2007 is N.Gopalam, S/o N.Yohan. The vendor of the petitioner in W.P.No.10816 of 2007 is S.V.Narsi Reddy, who purchased the land from E.Yesu. The vendor of the petitioners in W.P.Nos.10814 and 10820 of 2007 is D.Yesebu, S/o Yacobu. The vendor of the petitioner in W.P.No.10815 of 2007 is P.Nageswara Rao, who purchased the land from N.Gopalam. The petitioners also allege that second respondent also granted pattas to them regularizing their occupation. However, second respondent initiated action under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity) and issued notices in Form II under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007 (for short, 2007 Rules). In said notices dated 15.05.2007, the petitioners were called upon to show-cause as to why they should not summarily be evicted for being in possession of the land in contravention of Section 3(2) of the Act. The petitioners got issued replies through their lawyer on 19.05.2007. Second respondent is yet to look into the replies, conduct enquiry and pass appropriate orders. In the meanwhile contending that the Act has no application and the action initiated by second respondent is without jurisdiction, they filed instant writ petitions seeking invalidation of Form II notices and for consequential direction to the respondents not to dispossess them from their respective land.

This Court, on 04.06.2007 while directing the learned Assistant Government Pleader for Revenue (Assignment) to get instructions, adjourned the matters. When the matters were listed on 18.06.2007, the learned Assistant Government Pleader filed counter-affidavits in all the writ petitions and the matters were adjourned for filing reply-affidavits.

In the counter-affidavits, the allegation of the petitioners that the land was assigned to their vendor(s)/vendor(s) of the vendor(s) is not denied. However, it is averred that no condition was made in the assignment orders to the effect that the land is inalienable for a period of ten years and therefore, as directed by first respondent, action was initiated and the impugned notices were issued. The writ petitions were

opposed on the ground that they were premature, especially when the statutory proceedings are pending before second respondent.

The learned counsel for the petitioners has raised three submissions. First he contends that second respondent initiated action as per the directions of first respondent and therefore, there is likelihood of abdication of statutory provisions and powers, which are conferred on second respondent under the Act. Secondly it is submitted by the learned counsel that when the assignment was made by the then District Collector, vide proceedings in RC.A2-12221A/49, on 14.09.1950, it was clearly mentioned that "the land assigned should not be sold or otherwise alienated for a period of ten years" and therefore, the transactions under which the petitioners purchased the land from their vendors beyond the period of ten years do not attract the provisions of the Act, especially Section 3(2) of the Act. Lastly, he submits that when the assignment was made in favour of the vendors of the petitioners way back in 1950, the Act has no application even if the assigned land is transferred by way of sale. **Opposing,** the learned Assistant Government Pleader for Revenue (Assignment) submits that the land in survey Nos.118/1, 118/3 and 118/5 is Government land which was assigned to different landless poor persons including vendor(s)/vendor(s) of the vendor(s) of the petitioners and therefore, the moment the land is alienated in contravention of the provisions of the Board Standing Orders, it is rendered void under Section 3(2) of the Act. Secondly, he submits that the petitioners have got issued replies through their lawyer after receiving the notices in Form II and when the enquiry is pending before second respondent at the stage of notice, the writ petitions would not lie.

The action initiated by second respondent in issuing Form II notices under Rule 3 of the Rules is mainly challenged on the ground that the land in survey No.118/5 which is purchased by the petitioners is not encumbered by a condition of inalienability as per the original assignment order. The petitioners have not placed before this Court any assignment orders though the proceedings of the District Collector is annexed. Therefore, it is not possible in the absence of any such assignment orders to record a finding that the assignment made to the original assignee did not contain condition No.1 in D Form patta. This Court, however, hastens to add that as the show-cause notices were issued, it is always open to the petitioners to raise all the grounds if they are not raised in the replies sent to second respondent through their lawyer. As the writ petitions are mainly filed aggrieved by the show-cause notices, this Court is not inclined to go into the merits at this stage. Liberty is given to the petitioners to file additional explanations

and documentary evidence before second respondent, who shall consider all the contentions raised and pass necessary orders before taking any steps for evicting the petitioners from their respective land. A week's time is granted for submitting additional explanations and documentary evidence before second respondent. Thereafter, second respondent has to dispose of the matters within a period of four weeks without in any manner influenced by the fact that the action was initiated as per the directions of first respondent. Be it noted that second respondent, while exercising his powers under
Section 4 of the Act, has to act independently without there being any influence from any authority.

The writ petitions, with the above observations, are accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

25th June, 2007
Note: Issue CC in two days.
B/o
ghn